

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ERNEST FLAGG, as Next Friend of
JONATHAN BOND, a Minor,

Plaintiffs,

v.

CITY OF DETROIT, a municipal corporation;
DETROIT POLICE CHIEF ELLA BULLY-
CUMMINGS; DEPUTY DETROIT POLICE
CHIEF CARA BEST; JOHN DOE POLICE
OFFICERS 1-20; ASST. DEPUTY POLICE
CHIEF HAROLD CURETON; COMMANDER
CRAIG SCHWARTZ; POLICE LT. BILLY
JACKSON; MAYOR KWAME M. KILPATRICK,
CHRISTINE BEATTY, Jointly and Severally,

Defendants.

Case No. 05-CV-74253

District Judge Gerald E. Rosen

Magistrate Judge R. Steven Whalen

MOTION TO AMEND ORDER

Non-Party Velocita Wireless, LLC f/k/a Bell Industries, Inc. d/b/a SkyTel ("SkyTel"), by its attorneys, hereby moves the Court to amend the September 5, 2008 Order [Docket #141] issued by Magistrate Judge Whalen regarding production of text messages by SkyTel. In support of its motion, SkyTel states as follows:

1. Following a status conference on September 4, 2008, Magistrate Judge Whalen issued an Order on September 5, 2008 regarding production of text messages by SkyTel (the "September 5 Order").

2. The September 5 Order requires the following at pages 2-3:

B. Other Text Messages

Within 14 days of the date of this Order, Plaintiff shall serve a Rule 34 Document Request on Defendant City of Detroit, requesting incoming or outgoing text messages or other communications, maintained by SkyTel on behalf of the City of Detroit, as to text messaging devices issued to specific named individuals, during the time periods set forth at p.2, fn.1 of the Court's Order of March 20, 2008 [Docket #69]. Pursuant to that Order, Plaintiff shall endeavor to identify a more limited number of individuals than the 34 names listed on the original subpoena.

Within 7 days thereafter, Defendant City of Detroit shall forward the request to SkyTel, along with its written authorization to release said communications to the Court for *in camera* review.

Within 10 days of receiving this request from Defendant City of Detroit, SkyTel shall forward three copies of said communications, in CD form, to the chambers of the Honorable Gerald E. Rosen, United States District Judge, Eastern District of Michigan, in a sealed envelope, for distribution to United States Magistrate Judge R. Steven Whalen and United States Magistrate Judge Michael J. Hluchaniuk, who will conduct an *in camera* review.

3. On September 18, 2008, Plaintiff served on the City of Detroit Plaintiff's Fourth Request for the Production of Documents and Things to Defendant city of Detroit Regarding Electronic Communications Sent or Received on SkyTel Communications Devices Provided to the City of Detroit ("Plaintiff's Document Requests").

4. On October 9, 2008, the City of Detroit sent a letter to SkyTel requesting that Skytel release the documents requested in Plaintiff's Document Requests to the Court.

5. Counsel for SkyTel forwarded the City of Detroit's October 9 letter and Plaintiff's Document Requests to the SkyTel employee who is handling all requests for documents in this matter, but that SkyTel employee was on vacation until October 13. Counsel for SkyTel has now been informed by SkyTel that it is not possible to produce all of the text messages requested in City of Detroit's October 9 letter and Plaintiff's Document Requests within the 7n days required by the September 5 Order.

6. The City of Detroit's October 9 letter and Plaintiff's Document Requests seek all text messages sent or received by at least 39 "holders" over nearly two years, August 1, 2002 through April 17, 2004.¹ The time it takes to run this volume of searches on SkyTel's system prevents SkyTel from complying with the September 5 Order regarding production of the requested text messages.

7. As such, SkyTel seeks additional time to produce the requested text messages to the Court, and an amendment to Section B of the September 5 Order as follows (amendment in bold):

Within **28** days of receiving this request from Defendant City of Detroit, SkyTel shall forward three copies of said communications, in CD form, to the chambers of the Honorable Gerald E. Rosen, United States District Judge, Eastern District of Michigan, in a sealed envelope, for distribution to United States Magistrate Judge R. Steven Whalen and United States Magistrate Judge Michael J. Hluchaniuk, who will conduct an *in camera* review.

8. A proposed Order reflecting the above amendments is attached as Exhibit A.

9. SkyTel contacted all counsel of record by e-mail on October 15, 2008, seeking the parties' stipulation to its proposed amendment to the September 5 Order. Counsel for Plaintiff informed SkyTel that he could not stipulate to the proposed Order because of the current discovery deadline in this matter. SkyTel understands that Plaintiff filed a Motion to Extend Case Schedule on October 7, 2008 [Docket #156].

WHEREFORE, for all of the foregoing reasons, Non-Party Velocita Wireless, LLC f/k/a Bell Industries, Inc. d/b/a SkyTel respectfully requests that the Court enter the attached proposed Order amending Magistrate Whalen's September 5, 2008 Order [Docket #141].

¹ The document requests seek text messages from three time periods, but overlap between those periods results in the single time period listed here.

Respectfully submitted,

WILLIAMS, WILLIAMS, RATTNER & PLUNKETT, P.C.

By: /s/ David E. Plunkett

Thomas G. Plunkett (P18957)

David E. Plunkett (P66696)

Attorneys for Non-Party Velocita Wireless, LLC

f/k/a Bell Industries, Inc. d/b/a SkyTel

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Birmingham, Michigan 48009

(248) 642-0333

Dated: October 15, 2008

EXHIBIT A

UNITED STATES DISTRICT COURT
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ORDER

Non-Party Velocita Wireless, LLC f/k/a Bell Industries, Inc. d/b/a SkyTel ("SkyTel")
having filed a Motion to Amend Order and the Court being otherwise fully advised in the
premises, it is hereby

ORDERED that the September 5, 2008 Order [Docket #141] by Magistrate Whalen
regarding the procedure for production of text messages by Non-Party Velocita Wireless, LLC
f/k/a Bell Industries, Inc. d/b/a SkyTel ("SkyTel") is hereby amended; and it is further

ORDERED that the third paragraph of Section B of the September 5 Order [Docket
#141] shall be replaced by the following:

"Within 28 days of receiving this request from Defendant City of Detroit, SkyTel
shall forward three copies of said communications, in CD form, to the chambers
of the Honorable Gerald E. Rosen, United States District Judge, Eastern District

of Michigan, in a sealed envelope for distribution to United States Magistrate Judge R. Steven Whalen and United States Magistrate Judge Michael J. Hluchaniuk, who will conduct an *in camera* review.”

Date: _____

Honorable Gerald E. Rosen
United States District Judge

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BRIEF IN SUPPORT OF MOTION TO AMEND ORDER

Non-Party Velocita Wireless, LLC f/k/a Bell Industries, Inc. d/b/a SkyTel ("SkyTel"), by
its attorneys, relies on the facts set for in their Motion to Amend Order.

Respectfully submitted,

WILLIAMS, WILLIAMS, RATTNER & PLUNKETT, P.C.

By: /s/ David E. Plunkett

Thomas G. Plunkett (P18957)

David E. Plunkett (P66696)

Attorneys for Non-Party Velocita Wireless, LLC

f/k/a Bell Industries, Inc. d/b/a SkyTel

380 N. Old Woodward Avenue, Suite 300

Birmingham, Michigan 48009

(248) 642-0333

Dated: October 15, 2008

CERTIFICATE OF SERVICE

David E. Plunkett hereby certifies that on October 15, 2008 he served the foregoing Motion to Amend Order, Brief in Support of Motion to Amend Order and this Certificate of Service on behalf of Non-Party Velocita Wireless, LLC f/k/a Bell Industries, Inc. d/b/a SkyTel using the Court's ECF system, which will send notification to counsel of record.

Respectfully submitted,

WILLIAMS, WILLIAMS, RATTNER & PLUNKETT, P.C.

By: /s/ David E. Plunkett

Thomas G. Plunkett (P18957)

David E. Plunkett (P66696)

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Dated: October 15, 2008